

E-FILED - 2/12/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEX JESSE ROSALES,

Petitioner,

vs.

MARTEL, Warden,

Respondent.

No. C 08-2104 RMW (PR)

ORDER DENYING
APPLICATION FOR COURT TO
CONTINUE ABSENT
RESPONDENT'S ANSWER;
GRANTING APPLICATION FOR
ENLARGEMENT OF TIME TO
FILE ANSWER; DENYING STAY
OF PROCEEDINGS; GRANTING
EXTENSION OF TIME TO FILE
TRAVERSE

(Docket Nos. 7, 8, 17)

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Before this court are petitioner's application for the court to continue absent respondent's answer; respondent's application for enlargement of time to file answer; and petitioner's request to stay proceedings.

On December 15, 2008, petitioner filed an application for the court to continue absent respondent's answer. On December 30, 2008, respondent filed an application for enlargement of time to file an answer, and subsequently, on January 16, 2009, respondent filed his answer. Accordingly, petitioner's application for proceedings to continue without respondent's answer (docket no. 7) is DENIED as moot, respondent's application for enlargement of time to file an

1 answer is GRANTED (docket no. 8), and respondent's answer is deemed timely filed.

2 On January 27, 2009, petitioner filed a request for stay of proceedings (docket no. 17).
3 Petitioner states that he is currently in the custody of Stanislaus County Jail in an unrelated
4 proceeding. Petitioner's request seeks an indefinite extension of time to file a traverse because
5 he does not know when he will be returning to Mule Creek State Prison, where his legal files are.
6 While a district court has discretion to stay proceedings, it must balance the length of the stay
7 against the justification given for it, especially when its term is indefinite. See Yong v. INS, 208
8 F.3d 1116, 1119 (9th Cir. 2000). The court is not willing to hold this case in abeyance for an
9 indefinite period of time. Therefore, the motion for an indefinite extension of time is DENIED.
10 The court will however, grant petitioner an additional **90 days** from the date this order is filed in
11 which to file a traverse, if he wishes to do so. The court will also entertain future motions for
12 limited extensions of time upon a showing of good cause as to why such an extension would be
13 warranted.

14 This order terminates docket numbers 7, 8, and 17.

15 IT IS SO ORDERED.

16 DATED: 2/10/09



RONALD M. WHYTE
United States District Judge